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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA

OCT 14 2004

GARY M. BLAIR, Executive Officer  
By *Carrie L. Wagner*  
CARRIE L. WAGNER, Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SANTA BARBARA

10 SANTA MARIA DIVISION

*\* Unsealed  
pursuant to  
6/16/05 court's  
order*

11 THE PEOPLE OF THE STATE OF CALIFORNIA,

No. 1133603

12 Plaintiff,

PLAINTIFF'S NOTICE OF  
MOTION AND *SANCHEZ*  
MOTION FOR ORDER  
DIRECTING DEFENDANT TO  
LODGE INCULPATORY  
EVIDENCE WITH THE COURT;  
DECLARATION OF GERALD  
McC. FRANKLIN;  
MEMORANDUM OF POINTS  
AND AUTHORITIES

13 v.

14 MICHAEL JOE JACKSON,

15 Defendant.

16 DATE: October 14, 2004  
17 TIME: 8:30 a.m.  
18 DEPT: TBA (Melville)

19 ~~UNDER SEAL~~

20 TO: MICHAEL JOE JACKSON, AND TO THOMAS A. MESEREAU, STEVE  
21 COCHRAN, and ROBERT SANGER, HIS ATTORNEYS OF RECORD:

22 PLEASE TAKE NOTICE that on October 14, 2004, at 8:30 a.m. or as soon thereafter  
23 as the matter may be heard, in Department SM 2, Plaintiff will, and hereby does, move the  
24 Court for its order directing defendant's counsel to lodge with the Court all inculpatory physical  
25 evidence presently in their possession and which may come into their possession.  
26


27 This motion will be based on this notice, the accompanying Memorandum of Points  
28

1 and Authorities, such argument as may be presented at the hearing, and the records and  
2 pleadings on file in this matter.

3 DATED: October 1, 2004

4 Respectfully submitted,

5 THOMAS W. SNEDDON, JR.  
6 District Attorney

7 By:   
8 Gerald McC. Franklin, Senior Deputy

9 Attorneys for Plaintiff  
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1 John Doc and other memorabilia) was missing. I believe, and thereon allege, that the missing  
2 property was retained by Defendant or his employees and that it is still in the custody of  
3 Defendant's representatives.

4 5. I am informed by the evidence received in the grand jury proceeding that  
5 surveillance of the Doc family was undertaken on behalf of Defendant in early 2003, including  
6 the monitoring of telephone conversations and videotaping member of the Doc family and their  
7 places of residence. I believe from that evidence that photographs, audio tape recordings and  
8 videotape recordings were made and may still exist in the custody of Defendant's  
9 representatives.

10 I declare under penalty of perjury under the laws of California that the foregoing is  
11 true and correct, except as to matters stated upon my information and belief, and as to such  
12 matters I believe it to be true. I execute this declaration at Santa Barbara, California on October  
13 1, 2004.

14  
15   
16 GERALD McC. FRANKLIN



1 (Alaska 1978) 575 P.2d 1200, held that an attorney must not only turn  
2 over evidence given him by *third parties*, but also testify as to the source  
3 of that evidence. Both decisions emphasized that the attorney-client  
4 privilege was inapplicable because the third party was not acting as an  
5 agent of the attorney or the client.” (29 Cal.3d at p. 693, fn. 5, original  
6 italics.)

7 In *People v. Superior Court (Fairbank)* (1987) 192 Cal.App.3d 32  
8 the prosecutor learned from defendant’s intercepted jail letter to another  
9 inmate that defendant’s lawyer had possession of the murder weapons.  
10 When the trial court refused to order defense counsel to deliver them to  
11 the prosecutor, the prosecutor petitioned for a writ of mandate. In  
12 issuing the writ the court stated, “If counsel . . . chooses to . . . possess  
13 . . . physical evidence pertaining to the crime, counsel must immediately  
14 inform the court of the action.” (*Id.* at pp. 39-40.) The court also noted  
15 this “legal obligation[] should be self-executing and no motion by the  
16 prosecution or order by the court should be required to enforce [it].”  
17 (*Id.* at p. 39.)

#### 18 B. The Implications Of Sanchez

19 Quite plainly, the rule reiterated in *Sanchez* is independent of the limited discovery  
20 obligation imposed on a defendant by Penal Code section 1054.3. (The *Sanchez* court noted that  
21 the prosecutor’s motion in that case was not “a ‘discovery’ motion to which the reciprocal  
22 discovery statutes applied.” 24 Cal.App.4th 1012, at p. 1026.) The *Sanchez* rule applies both to  
23 physical evidence that is inculpatory *per se* (e.g., contraband, and instrumentalities or fruits of a  
24 crime such as weapons, holdup notes, pay-owe sheets, stolen jewelry, etc.) and to tangible  
25 evidence that is inculpatory in the circumstances of the pending case (e.g, documentary evidence  
26 of a “vacation” trip to Brazil, planned for the Doe family by defendant or his associates in early  
27 2003), and to intangible evidence (e.g., the location of the victim’s wallet when it was seized by  
28 a defense investigator – *People v. Meredith*, discussed in *Sanchez*).

Much of the evidence obtained by search warrant in this case would come within  
*Sanchez*’s rule had it been overlooked by the searching officers and then delivered to defense  
counsel by defendant himself or one of his employees. For instance, the letters and cards from

1 John Doc to defendant (Item 315), the photograph of John Doe (Item 323), John Doc's school  
2 books (Item 646), telephone recording equipment (Item 1009), Neverland Valley Ranch's visitor  
3 logs for 2001 through 2003, and so forth.

4 Some personal property belonging to the Doc family "disappeared" in the course of  
5 the removal of their belongings from their apartment in East Los Angeles and its storage at  
6 Dino's Storage, before the balance of the property was returned to the family at the insistence of  
7 William Dickerman, their lawyer. If, as defendant presently argues, that acquisition was  
8 overseen by someone in the employ of Attorney Mark Geragos, there is reason to believe it  
9 currently is in the custody of the lawyers who took his place.

10 There is reason to believe that physical evidence resulting from the surveillance of  
11 members of the Doe family – photographs, videotapes, motion pictures – and from the unlawful  
12 monitoring and recording of telephone conversations without the knowledge or, at least, the  
13 consent of all the parties to the conversations – may be in the possession of defense counsel or  
14 their agents. The testimony received by the grand jury in this matter established that several  
15 people were involved in that surveillance, and that they often made themselves conspicuous for  
16 the intimidating effect their interest would have on the subjects of their activity.

17 C. The Court Should Determine Whether Given Evidence  
18 Is Inculpatory Or Exculpatory When Considered In  
19 Light Of Count One Of The Indictment

20 Whether a given item of property is inculpatory or exculpatory may depend on the  
21 inference the viewer is asked to draw from it when considered in the light of other evidence. In  
22 turn, the accuracy of that judgment may depend on the particular bias of the viewer.

23 In our respectful submission, we believe the Court is best positioned to make that  
24 judgment, and to that end it should direct defense counsel to lodge with the Court any evidence  
25 under the control of the Defendant that comes fairly within the following parameters:

- 26 – All video and audio recordings of each and every member of the Doe family,  
27 including but not limited to:
  - 28 – – The recording of the LADCFS interview on February 20, 2003, made on behalf

1 of Michael Jackson;

2           -- All surreptitiously recorded telephone conversations involving members of the  
3 Doe family or persons named as coconspirators in the indictment;

4           -- Recordings of the Bradley Miller interview of the Doe family, including all  
5 unedited and edited versions of this recording;

6           -- All agreements or contracts executed by any member of the Doe family, including that  
7 agreement obtained on or about February 19, 2003 by Bradley Miller on behalf of Michael  
8 Jackson;

9           -- All photographs and video or audio recordings of surveillance of any location where the  
10 Doe family or members thereof were or are believed have resided or reside;

11           -- All video or audio recordings of named coconspirators, relating to the Doe family or any  
12 of its members;

13           -- All writings of known coconspirators relating to the Doe family and of its members;

14           -- All writings and audio or video recordings of the defendant that inculpates the  
15 defendant;

16           -- Any and all documentation or real evidence regarding the "Brazil Trip" planned for the  
17 Does;

18           -- All written or recorded statements made by every employee of Michael Jackson that  
19 tends to incriminate Michael Jackson with respect to the allegations set forth in the indictment;

20           -- All correspondence written to any member of the Doe family by Michael Jackson,  
21 including those letters to John Doe which were placed in storage with other property by  
22 employees of Michael Jackson in early 2003 and never returned to the Doe family;

23           -- Any correspondence written by any member of the Doe family to Michael Jackson;

24           -- The stuffed animal given to John Doe by Michael Jackson, taken from the Doe's  
25 property by employees of Michael Jackson when that property was stored by them, and not  
26 returned to the Doe family;

27           -- Checks, receipts and all other records for moving and storage of the Doe Family's  
28 property on behalf of Michael Jackson or any named or unnamed co-conspirator including Mark



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